

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
September 13, 2016**

In the Matter of)	
)	
Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network)	PS Docket No. 16-269
)	
)	
Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012)	PS Docket No. 12-94
)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	

COMMENTS OF DVA Consulting, LLC

DVA Consulting, LLC (“DVA”) welcomes the opportunity to respond to this Notice of Proposed Rulemaking (NPRM) pertaining to the review of State Opt-Out Requests from the FirstNet Radio Access Network (RAN). Below, please find the relevant sections of the NPRM where the Commission seeks comment (identified by paragraph number: ¶), followed by DVA’s comments.

III. NOTICE OF PROPOSED RULEMAKING

A: Opt-Out Procedures

FCC Proposed Rulemaking (¶ 49): *In order to implement the provisions of the Act relating to the Commission's responsibilities for reviewing state opt-out plans, we therefore propose to codify in our rules a requirement that states electing to opt out of the NPSBN must file a notification with the Commission no later than 90 days after the date they receive electronic notice from FirstNet as provided in Section 6302(e)(2). We also propose to require that the state's opt-out notice to the Commission certify that the state has also notified FirstNet and NTIA of its opt-out decision.*

DVA Comments: DVA agrees that these requirements are consistent with the Act and FirstNet's interpretation.

FCC Seeks Comment (¶ 49): *We also seek comment on how such notice should be provided to the Commission. Should someone other than a state Governor, such as the Governor's designee, be permitted to file the notice? Should the Commission establish a dedicated email address? Should notice be filed in Docket 16-269? Is there other information that should be included in the notice?*

DVA Comments: DVA recommends that the notice should come directly from the Governor's office. DVA leaves it to the Commission to determine if a dedicated email address is required, although DVA does not believe it should be required to file under Docket 16-269. Finally, DVA believes no additional information is required with the notice at the time of notification, other than certification that FirstNet and the NTIA have also been notified.

FCC Seeks Comment (§ 51): *With respect to the RFP process, we seek comment on what showing should be required for a state to demonstrate that it has “develop[ed] and complete[d]” an RFP within the 180 days required by the Act.*

DVA Comments: DVA believes that within the 180 days required by the Act, a state should have developed and released an RFP, received responses with firm commitments from a potential partner or partners and will have incorporated those response commitments into its alternative plan. The state must have sufficient information from the RFP responses in order to document its approach to the construction, maintenance, operation, and improvements of the RAN and adequately demonstrate the technical and interoperability requirements in accordance with 47 U.S.C. 1442(e)(3)(C)(i).

FCC Proposed Rulemaking (§ 51): *However RFP completion is defined, we propose that if an opt-out state fails to meet this requirement within the statutory 180 day period, the consequence should be that it forfeits its right to further consideration of its opt-out application by the Commission. This is consistent with FirstNet’s interpretation and we believe it is consistent with the Act’s emphasis on speed of deployment of the NPSBN. We seek comment on this proposed approach.*

DVA Comments: DVA agrees that this proposed approach is consistent with the Act and FirstNet’s interpretation.

FCC Proposed Rulemaking (§ 52): *Therefore, we propose to treat a state’s failure to submit an alternative plan within the 180-day period as discontinuing that state’s opt-out*

process and forfeiting of its right to further consideration if its opt-out request. We seek comment on this approach, which we believe best promotes the balanced objectives of the Act.

DVA Comments: DVA agrees that this proposed approach is consistent with the Act and FirstNet's interpretation.

FCC Seeks Comment (¶ 53): *We also seek specific comment on what an opt-out state should be required to include in its alternative plan in order for the plan to be considered complete for purposes of the Commission's review. As described in greater detail in section III.C. below, our tentative view is that the plan as filed with the Commission must, at a minimum, (1) address the four general subject areas identified in the Act (construction, maintenance, operation, and improvements of the state RAN), (2) address the two interoperability requirements set forth in Sections 6302(e)(3)(C)(i)(I) and (II) of the Act, and (3) specifically address all of the requirements of the Technical Advisory Board for First Responder Interoperability.*

DVA Comments: DVA agrees that this minimum information is required for the FCC to perform an adequate evaluation.

DVA sees no issue with the Commission requiring a standardized format, but leaves this decision to the Commission.

DVA believes that the Commission should be permitted to discuss or seek clarification of the alternative plan with the filer and that the filer should be allowed to make amendments to the plan once it is filed, but only in response to requests for clarification from the Commission.

DVA does not believe the Commission should provide conditional approval based on substantial compliance with the approved plan under the awarded contract, but should approve the plan if it is in compliance and leave subsequent evaluation and continued compliance to the NTIA's ongoing interoperability evaluation.

FCC Seeks Comment (¶ 54): *Additionally, we seek comment on who should have access to and the ability to comment on state alternative plans.*

DVA Comments: DVA believes that alternative plans may very well contain confidential or sensitive information that could compromise the security of public safety networks and should therefore be kept private and not filed publicly.

FCC Seeks Comment (¶ 55): *We also seek comment on whether FirstNet should be allowed access and the ability to comment to the Commission on state plans within a defined comment period.*

DVA Comments: DVA believes that it is acceptable for both FirstNet and NTIA to be allowed access to the alternative plans submitted by states, understanding that plans that are approved by the Commission will subsequently be reviewed by both FirstNet and NTIA. However, it is DVA's opinion that the plan review by the Commission is intended to be separate and distinct from the NTIA review process, as the Commission also acknowledges. Therefore, DVA recommends that FirstNet and NTIA restrict their comments to the review procedure and criteria proposed by the Commission and the Commission should not seek comment from FirstNet or NTIA on specific state plans during the FCC review period.

Similarly, the FCC review process should remain fair and equitable for all states and should not be influenced by comments from other states. It is DVA's opinion that if a state that has elected to take responsibility for its own RAN desires to coordinate with any of its neighboring states; it should be the state's decision to share their plan with their neighbors and if appropriate, incorporate any neighboring state input into its alternative plan.

B: Evaluation Criteria

FCC Seeks Comment (¶ 57): *We thus propose to establish a “shot clock” for Commission action on alternative plans to provide a measure of certainty and expedience to the process. We seek comment on what an appropriate shot clock period would be.*

DVA Comments: DVA agrees that each alternative plan submitted should receive expeditious review in order to not unnecessarily delay construction of the PSBN. Therefore, DVA recommends that either a 60 or 90 day review time period should be established by the Commission. DVA recognizes that multiple alternative plans may be submitted to the Commission nearly simultaneously. However, it is not likely that a significant number of states will take responsibility for their own RAN development and operation, and therefore DVA considers this risk to be low. The shot clock should only be suspended if a request for clarification is required from the state, and the clock would be suspended during the time the state would need to respond.

FCC Seeks Comment (¶ 59): *We agree with FirstNet's interpretation, and given the statutory language we believe that the Commission is barred from entertaining any amended or different alternative plan if it has issued a decision disapproving a state's alternative plan.*

DVA Comments: DVA agrees with this position, provided the Commission took the opportunity to seek clarification of the plan prior to a decision, if additional information was required.

FCC Seeks Comment (¶ 62): *Accordingly, we propose that the FCC evaluate state opt-out plans based solely on whether they comply with the requirements for interoperability at the time the plan is submitted, and that its evaluation would not extend to issues that the Act reserves for NTIA's review, such as the state's technical capabilities to operate the RAN, funding support, or the state's ability to maintain "ongoing" interoperability with the NPSBN. Thus, the Commission's approval of a state opt-out plan as meeting the interoperability criteria in Section 6302(e)(3)(C) of the Act would not create a presumption that the state plan meets any of the criteria that NTIA is responsible for evaluating under Section 6302(e)(3)(D) of the Act.*

DVA Comments: DVA agrees that this proposed approach is consistent with the Act.

FCC Seeks Comment (¶ 63): *We therefore believe that states seeking to opt out should be required to demonstrate to the Commission in their alternative plans that their state RANs will adhere to FirstNet's network policies relating to interoperability, to the extent that FirstNet has published such policies at the time that states submit their plans to the Commission.*

DVA Comments: DVA agrees with this approach and believes it is consistent with the overarching goal of the NPSBN.

FCC Proposed Rulemaking (¶ 64): *Under Section 6302(e)(3)(C)(i) of the Act, opt-out states are responsible only for construction, maintenance, operation and improvements of the RAN within their states. We therefore propose that the Commission's evaluation of the opt-out*

states' alternative plans be limited to the RAN. In this respect, Section 6202(b)(2)(A) of the Act defines the RAN to consist of "all the cell site equipment, antennas, and backhaul equipment, based on commercial standards, that are required to enable wireless communications with devices using the public safety broadband spectrum." FirstNet has interpreted this definition to include "standard E-UTRAN elements (e.g., the eNodeB) and including, but not limited to, backhaul to FirstNet designated consolidation points." We seek comment on how to apply this RAN definition in our analysis and whether there are any elements of the definition that should not be considered as part of the Commission's interoperability review.

DVA Comments: DVA agrees with the Commission's approach, described later in the NPRM, to limit its analysis to only those interoperability elements pertaining to the RAN.

FCC Seeks Comment (§ 65): *We also propose to exclude certain components of the NSPBN from our review because we regard them as not included within the statutory definition of RAN as interpreted by FirstNet. For example, we note that the RAN definition does not include user equipment (UE) or devices and we therefore tentatively conclude that UE-related interoperability considerations are outside of the scope of our opt-out evaluation. Similarly, we tentatively conclude that application-related interoperability considerations are outside of the scope of our opt-out evaluation. Applications usually run between UE and an application server residing in the core. While the corresponding control plane and user plane traffic typically traverses the RAN, this traffic remains transparent to the functions performed in the RAN. Thus, even though applications may play an important role in interoperability, we believe they are beyond the scope of our review because the Act limits the FCC evaluation to the RAN itself.*

DVA Comments: DVA agrees with the Commission’s approach to limit its analysis to only those interoperability elements pertaining to the RAN and to exclude UE and application-related interoperability considerations.

C: Content and Review of State Plan Elements

FCC Seeks Comment (¶ 67): *More pointedly, we propose that any alternate plan submitted by a state that would require alteration or changes to the FirstNet network to accommodate the state’s proposed RAN would not meet the interoperability requirement under the Act.*

DVA Comments: DVA agrees with this approach and believes it is consistent with the overarching goal of the NPSBN.

FCC Seeks Comment (¶ 69): *Specifically, the Interoperability Board Report specified 46 recommended interoperability requirements (“SHALLs”) and an additional set of 55 recommended considerations (“SHOULDs”). Given the Act’s reference to “requirements,” we tentatively conclude that only the 46 recommended requirements from the Board Report are appropriate to consider as a part of the Commission’s evaluation under the first statutory prong. Moreover, since the Act limits state opt-out plans to development of state RANs, we propose to further restrict the Commission’s review of state plans to their compliance with those requirements from among the 46 that are RAN-related. Specifically, we propose that our review under this prong would include requirements (1) - (3), (7) - (10), (20) - (25), (29), (39), (41) - (42) from the Board Report...*

DVA Comments: DVA agrees that only the 46 recommended requirements from the Board Report are appropriate to consider as a part of the Commission’s evaluation. Additionally, DVA agrees with the specific requirements identified by the Commission, but recommends the Commission include all of the requirements in Section 1.3.1 of the Board Report pertaining to 3GPP LTE Standards and Interfaces (Requirements (1) – (11)). DVA also recommends that requirement 38 be included in the Commissions review.

FCC Seeks Comment (§ 70): *We also believe that the statute calls for the Commission to independently and impartially evaluate whether alternative plans comply with the interoperability-related requirements established by FirstNet, but does not empower the Commission to impose network policies or interoperability requirements on FirstNet.*

DVA Comments: DVA agrees with this approach and believes it is consistent with the overarching goal of the NPSBN.

FCC Seeks Comment (§ 71): *We seek comment on what specific information a state should provide in its alternative plan to demonstrate that it will be interoperable with the FirstNet network in accordance with the two-prong statutory test.*

DVA Comments: DVA believes the state’s alternative plan should provide specific technical information relative to every interoperability requirement indicating how each requirement will be met. This information may require specific vendor-supplied or implementation details or some other form of explanation. This interoperability “showing” must also include the aspects associated with connecting to and operating with the FirstNet national core; all associated interfaces; as well as any network policies defined by FirstNet.

DVA believes the alternative plan should include vendor information with a roadmap detailing the planned life-cycle of the state's proposed RAN, how the state RAN will provide for backward compatibility, and how equipment hardware/software/firmware will be evolved and phased in and out over time to maintain interoperability. However, this later point (maintaining interoperability) will be a focus for the NTIA review of the plan.

The alternative plan should also address the verification test plans the state intends to conduct to ensure interoperability prior to declaring the RAN network ready for integration into the NPSBN.

FCC Seeks Comment (§ 72): *If the Commission opts to require applicants to certify their compliance, would self-certification by the governor or his/her designee be sufficient? Under such an approach, for example, states could use the following language in their certification: "The state of [xyz] hereby certifies and affirms that its plan to construct, maintain, operate and improve the RAN within its state will comply with all the FirstNet interoperability requirements and that all information and supporting documentations that it has provided to the FCC are true and accurate to the best of its knowledge." Another approach would be to require a third party, such as an industry association with interoperability expertise, to certify the plans. We seek comment on these alternative approaches.*

DVA Comments: DVA suggests that self-certification by the Governor's office of the state's alternative plan's compliance to the interoperability requirements will be preferable. It should be the state's responsibility to recruit the necessary expertise to thoroughly address the interoperability requirements and provide sufficient evidence for the Commission to confirm compliance. Similarly, the Commission should also have sufficient technical expertise to

evaluate and access the interoperability showing from the state or request additional information when necessary.

FCC Seeks Comment (§ 73): *Finally, we seek comment on how the Commission should document its decisions to approve or disapprove state opt-out requests under the statutory criteria.*

DVA Comments: It is DVA's opinion the Commission should issue a written decision that explains the evaluation of the alternative plan against each criteria established by the Commission. Such a document will provide the state with a clear explanation of the decision and also, in the event of disapproval, provide the information necessary to avoid claims of corruption.